

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

ROBERT MOE, )  
                  )  
Plaintiff,     )      Case No. 05-6302-HU  
                  )  
vs.             )      ORDER  
                  )  
JO ANNE B. BARNHART, )  
Commissioner of Social Security, )  
                  )  
Defendant.     )

Kathryn Tassinari  
Drew L. Johnson  
1700 Valley River Drive  
Eugene, Oregon 97401

Attorneys for Plaintiff

Karin J. Immergut  
United States Attorney  
District of Oregon  
Neil J. Evans  
Assistant United States Attorney  
1000 S. W. Third Avenue, Suite 600  
Portland, Oregon 97204

Richard M. Rodriguez  
Special Assistant United States Attorney  
Office of the General Counsel  
Social Security Administration  
701 Fifth Avenue, Suite 2900 M/S 901  
Seattle, Washington 98104

Attorneys for Defendant

KING, Judge:

The Honorable Dennis J. Hubel, United States Magistrate Judge, filed Findings and Recommendation on February 23, 2006. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). The Commissioner has filed objections to the Findings and Recommendation. Plaintiff has filed a response.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issues raised in petitioner's objections to the Findings and Recommendation, I find no error. I find plaintiff's citation to Evans v. Chater, 110 F.3d 1480 (9<sup>th</sup> Cir. 1997) to be particularly persuasive.

///

///

Accordingly, I ADOPT Magistrate Judge Hubel's Findings and Recommendation (#9) and DENY the Commissioner's Motion to Dismiss (#4), and REMAND the case to the Commissioner for a determination of whether good cause exists for extending the time to request review, because mental incapacity prevented plaintiff from requesting timely review of the Commissioner's denial of benefits.

IT IS SO ORDERED.

Dated this 14th day of April, 2006.

/s/ Garr M. King  
Garr M. King  
United States District Judge